



MUR # S379

**PETER DEUTSCH FOR SENATE
FLORIDA**

July 22, 2003

Lawrence Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

2003 JUL 23 A 11:07
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

RE: **Complaint of Alex Penelas's Violation of the Federal
Election Campaign Act**

Dear Mr. Norton:

This is a complaint regarding the violation by the Alex Penelas U.S. Senate Campaign ("Campaign"), of the Federal Election Campaign Act of 1971, as amended ("FECA"). In particular, a March 30, 2003, Miami Herald article (attached exhibit 1) indicates that the Campaign knowingly accepted contributions made by employees and vendors of CarePlus Medical Centers Inc. ("CarePlus"), which were solicited in an illegally coercive manner. Attached (exhibit 2) is a memorandum from my counsel analyzing CarePlus' solicitation under FECA. Moreover, the Campaign's 2003 July Report (exhibit 3) corroborates the article's claim by reporting that the Campaign received at least \$49,000 from employees of CarePlus and their spouses. Please note that all of these contributions are reported as having been received on the same date, May 16, 2003.

Thus, based on information and belief, it appears that Mr. Penelas and his Campaign have violated FECA's prohibition on federal candidates knowingly accepting illegal contributions under 2 U.S.C. § 441a(f). I request that the Federal Election Commission investigate this matter and take appropriate action.

PETER DEUTSCH FOR SENATE / P.O. BOX 816215 / HOLLYWOOD, FLORIDA 33081

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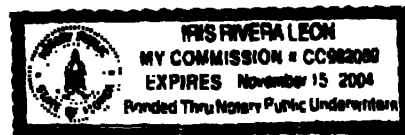
Lawrence Norton, Esq.
July 22, 2003
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Sincerely,

Ryan Hampton
Ryan Hampton
Finance Director
Peter Deutsch for Senate

Attachments

This has been sworn and attested
to me this 22nd day of July, 2003



Iris Rivera Leon

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Posted on Sun, Mar. 30, 2003
Jim DeFede - The Miami Herald

Fundraising effort raises concerns

In a few weeks, Miami-Dade County Mayor Alex Penelas is expected to formally announce he's running for the United States Senate. As is always the case in politics, money will be a major factor in determining whether his campaign will be successful.

His main rival for the Democratic nomination, U.S. Rep. Peter Deutsch, already has a campaign war chest of \$2.5 million.

One person eager to help Penelas is Michael Fernández, owner and chief executive officer of CarePlus Medical Centers Inc. based in Coral Gables. The company operates 12 clinics in Miami-Dade and Broward counties, has more than 950 employees and generates revenue of nearly \$400 million a year.

Fernández has been a major campaign contributor to both the Democratic and Republican parties and most recently helped raise money for Bill Richardson's campaign to become governor of New Mexico. He has now pledged his support to Penelas.

"I've been trying to raise as much as I can for Alex," Fernández said. "Hopefully, I can raise a hundred zillion dollars for the guy."

TASK FORCE MEMBER

Fernández said he believes Penelas has done great things for Miami. Fernández is a member of Penelas' Healthcare Access Task Force, which has been studying ways to better provide medical services to the indigent and uninsured. Fernández was co-chair of the subcommittee that dealt with the working uninsured.

One of the recommendations of that subcommittee, adopted by the mayor, is to create an insurance pool, subsidized by taxpayers, that would allow small businesses to offer no-frills insurance coverage to their employees. The mayor's task force estimates this pool for the working uninsured could help as many as 200,000 people in Miami-Dade County and would allow them to seek medical help from hospitals and clinics other than Jackson Memorial Hospital.

As part of that effort to raise money for Penelas, Fernández said he instructed his company's vice president, Bert Valdes, to start collecting contributions last week from company employees.

"Mr. Valdes started the fundraising at my direction," Fernández explained during an interview Friday evening.

E-MAIL SENT

On Monday, Valdes sent an e-mail to all "physicians and executive level staff" noting Penelas has been a "strong supporter of Mike Fernandez and CarePlus Medical Centers" and that the mayor is now running for the United States Senate.

"[Penelas] has been working closely with Mr. Mike Fernandez and other community leaders to effect change in the indigent care programs that could represent opportunities for companies like ours to increase revenue while serving our indigent population and providing alternatives other than Jackson Memorial Health Systems," the e-mail states. "Mr. Mike Fernandez is asking each of you for a \$1,000 campaign contribution for the Alex Penelas for Senate Campaign. The deadline for this contribution is Friday the 28th. He has asked for an accounting of the individuals that donate and those that did not."

The e-mail explains that Fernández wants to be able to thank those who donate "personally." The e-mail goes on to state the checks "must be dated April 2, 2003, or later."

"All physicians, large vendors and executive level staff will be expected to donate," the e-mail adds.

In an interview Friday, Valdes defended the solicitation. When I read him the section regarding how the mayor's healthcare initiatives "represent opportunities for companies like ours to increase revenue," Valdes said there was nothing wrong with making such a statement.

"Anytime we can tap into any programs, whether they are federal or local, we see that as an opportunity," Valdes said.

UP TO INDIVIDUALS

Asked about the line in the e-mail in which the recipients were "expected to donate," he said it was still ultimately up to each individual.

"They understand that it is voluntary," he said.

Penelas refused to be interviewed for this story. The mayor's chief of staff, Javier Soto, said he was unaware of the e-mail and expressed concern at its contents.

"I know that Mike Fernández in public meetings of the Healthcare Access Task Force has stated that neither he nor his enterprise would seek to engage in any type of business relationship with anything that is created or occurs as a result of the efforts of the Healthcare Access Task Force," Soto said. "So I am a little surprised to hear about this e-mail."

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An hour later, the mayor's chief of staff called back, saying the company had just sent him a copy of the e-mail, and that the sentence that referred to increasing revenue and the sentence that talked about all physicians and executive level staff being "expected to donate" were not in the version sent him.

Valdes did not return subsequent calls for comment.

Friday evening, Fernández said he had not seen the e-mail, but he vehemently denied his company will try to financially benefit from the mayor's healthcare initiatives. His clinics mainly serve senior citizens who will not be covered under this proposal.

"I have put a lot of time and effort in this job trying to serve this community, and for you to turn it around and say that I am going to benefit from it is wrong," he said. "We will not participate in it as an insurer or a provider of healthcare coverage."

The e-mail raises other concerns, as well.

Since Penelas has not opened a campaign account or filed his paperwork to become an official candidate, collecting checks would violate campaign finance rules.

Political consultant Ric Katz, who is acting as Penelas' spokesman on matters relating to the possible Senate race, sought to distance the mayor from Fernández's efforts.

"That is not the way we have ever done political fundraising," Katz said. "We do not ask for postdated checks. We certainly would not authorize anyone in any way to collect checks before we have opened a campaign or a campaign account."

Katz said none of Penelas' advisors knew what Fernández was doing.

"What happens is that people who think they are helping do things unbeknownst to us," he said. "That kind of violation of the campaign finance regulation is not invited, not condoned and not wanted by Alex Penelas. We will follow the rules. We will follow every bit of the federal election law."

Fernández said he has spoken to Penelas several times about the mayor's desire to run for the Senate. He offered conflicting statements, however, about why he asked Valdes to start collecting checks for Penelas' Senate campaign.

"Alex is gearing up for a campaign," he said, "and I was asked to work toward that effort."

Who asked?

"I have friends who are political, and I said I would raise some money for him," he said.

A RETRACTION

Asked again for the names of those who requested his fundraising help, he responded: "I retract that I was asked. I am doing it because I want to help the man. I was not asked by anyone to collect these checks."

Neither Fernández nor Valdes would say how much money they raised for Pencelas last week, but Katz said it doesn't matter.

"We will not be accepting those contributions," he said. "Absolutely not."

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MEMORANDUM

July 22, 2003

TO: Ryan Hampton, Finance Director
Peter Deutsch for Senate

FROM: Kenneth A. Gross
Ki P. Hong

RE: Application of the Federal Election Campaign Act to
CarePlus Medical Centers Inc. Solicitation on Behalf
of Alex Penelas

Per your request, this memorandum describes the application of the Federal Election Campaign Act of 1971, as amended, ("FECA") to an alleged solicitation that was made by CarePlus Medical Centers Inc. ("CarePlus") on behalf of Alex Penelas U.S. Senate Campaign ("Campaign"). In particular, the attached March 30, 2003, Miami Herald article indicates that Michael Fernández, the owner and Chief Executive Officer of CarePlus, instructed Bert Valdes, the Vice President of CarePlus, to raise funds for the Campaign. As a result, Mr. Valdes sent an e-mail, which stated, among other things, that "all physicians, large vendors and executive level staff will be expected to donate." (emphasis added). You want to know whether this violates FECA's prohibition on coercive solicitations. Please note that our analysis is based on the facts as alleged in the above article, and we have no opinion as to the veracity of that article.

FECA prohibits a corporation from using coercive practices in soliciting contributions on behalf of its separate segregated fund. 2 U.S.C. § 441b(b)(3)(A). The Federal Election Commission ("Commission" or "FEC") has interpreted this prohibition to extend to solicitations made by corporations on behalf of federal candidates. Indeed, Commission rules list as an example of illegal corporate facilitation solicitations that are made

[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of

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force, to urge any individual to make a contribution or engage in fundraising activities on behalf of a candidate or political committee. 11 C.F.R. § 114.2(f)(2)(iv).

Thus, the analysis boils down to whether the language in Mr. Valdes's e-mail, which states that "all physicians, large vendors and executive level staff will be expected to donate" is coercive, in which case it would violate the above provisions (or at the very least the FEC rule). In a case involving Mutual Bank, ("Mutual Bank Case") the president of the Bank sent a memorandum to the Bank's vice-presidents stating that "Every single officer of this institution should-must-consider it a part of his or her position to contribute." See United States v. Mutual Bank, No. 85-00086 (D.Mass. March 29, 1985); see also FEC, MUR 1998. The Court determined this language to be coercive under FECA. See id.

The language in Mr. Valdes's e-mail is similar to the language that was at issue in the Mutual Bank Case. In particular, similar to the words "should-must", the word "expect" in the Valdes e-mail suggests that contributing is a requirement rather than an individual choice. Moreover, the Valdes e-mail states that contributions are expected of "all" physicians, large vendors, and executive level staff -- making it clear that no one is exempt from this expectation. This is comparable to the Mutual Bank Case where the President stated that "every single officer" should-must contribute. Given these similarities, the Valdes e-mail raises sufficient concerns under FECA's ban on coercive activity, as the term was applied in the Mutual Bank Case, that a federal investigation of such activity is warranted.

Please note, however, that we are unable to definitively conclude that the Valdes e-mail violates the ban on coercive activity given the lack of clear, definitive legal authority interpreting the term and the fact that other circumstances surrounding the drafting and sending of the e-mail (of which we are unaware) may be relevant to making this determination.

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(3)

Contribution Summary Report

PennPlus CarePlus PRELIMINARY Report

Name	Year to Date	Cycle Total	Primary Total	General Total	Runoff Total	Last Date	Last Amount	Total Number
Aboud, Joseph	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Alonso, Pedro	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Aquina, Bienvenido	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Aran, Manuel	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Artiles, Juan	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Bartold, Ana	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Blanch, Auberio	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
● Juan, Fred	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Camada, Fernando	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
M, Carralero	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Corona, Lucia	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Fernandez, Alexander	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Fernandez, Lilia	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Fernandez, George	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Fernandez, Mario	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Fernandez, Carlos	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Georgi, Pilar	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Georgi, Renato	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Gonzalez, Angela	\$500.00	\$500.00	\$500.00	\$0.00	\$0.00	6/16/2003	\$500.00	1
Hajje, Simon	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Hernandez, Eida	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
● Hernandez, Tereita	\$250.00	\$250.00	\$250.00	\$0.00	\$0.00	6/16/2003	\$250.00	1
● Jepsen, Ronako	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Jimenez, Peter	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Jimenez, Yamilia	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Lopez-andujar, Julio	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Marth, Nidia	\$250.00	\$250.00	\$250.00	\$0.00	\$0.00	6/16/2003	\$250.00	1
Michiel, Pablo	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Ortizabel, Orlando	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Perez, Jose	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Ragelacio, Eida	\$500.00	\$500.00	\$500.00	\$0.00	\$0.00	6/16/2003	\$500.00	1
Rodriguez-mendez, Jorge	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Rubio, Eduardo	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1

Tuesday, July 22, 2003

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Name	Year to Date	Cycle Total	Primary Total	General Total	Runoff Total	Last Date	Last Amount	Total Number
Ruenda, Julio	\$500.00	\$500.00	\$500.00	\$0.00	\$0.00	6/16/2003	\$500.00	1
Santibañez, Rene	\$500.00	\$500.00	\$500.00	\$0.00	\$0.00	5/16/2003	\$500.00	1
Serrano Martinez, Luis	\$500.00	\$500.00	\$500.00	\$0.00	\$0.00	6/16/2003	\$500.00	1
Toledo, Vella	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Ubeda, Rafael	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	6/16/2003	\$1,000.00	1
Valdivia, Maria	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	5/16/2003	\$1,000.00	1
Valdez, Humberto	\$2,000.00	\$2,000.00	\$2,000.00	\$0.00	\$0.00	6/16/2003	\$2,000.00	1
Vocalini, Leandro	\$1,000.00	\$1,000.00	\$1,000.00	\$0.00	\$0.00	5/16/2003	\$1,000.00	1
Totals:	\$49,000.00	\$49,000.00	\$49,000.00	\$0.00	\$0.00			41